

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

1	FIELDS CORPORATION,)	
2)	
3	Appellant,)	PCHB No. 89-126
4)	
5	v.)	
6	PUGET SOUND AIR POLLUTION)	FINAL FINDINGS OF FACT,
7	CONTROL AGENCY,)	CONCLUSIONS OF LAW
)	AND ORDER
	Respondent.)	

On September 28, 1989, Fields Corporation filed an appeal contesting the Puget Sound Air Pollution Control Agency's ("PSAPCA") issuance of Notice and Order of Civil Penalty No. 6978 (\$400) for alleged opacity violations on July 20, 1989 from their facility in the Tacoma Tide Flats.

The hearing on the merits was held on December 12, 1989, in Lacey, Washington. Present for the Board were Members, Judith A. Bendor, presiding, Wick Dufford and Harold S. Zimmerman.

Appellant Fields Corporation ("Fields") was represented by

1 John R. Fields, the General Manager. Respondent PSAPCA was
2 represented by Attorney Keith D. McGoffin. Court reporter Kathryn
3 Beehler of Gene Barker and Associates recorded the proceedings.

4 Testimony was heard. Exhibits were admitted and examined.
5 Argument was made. From the foregoing, the Board makes these:

6 FINDINGS OF FACT

7 I

8 Fields Corporation has a plant located at 2240 Taylor Way in the
9 City of Tacoma, in an area known as the Tacoma Tide Flats. The plant
10 is in an area which is in a non-attainment status for particulate
11 standards.

12 II

13 PSAPCA is a municipal corporation with authority to conduct a
14 program of air pollution prevention and control in a multi-county area
15 which includes the City of Tacoma, site of the emission in question.

16 The Board takes notice of PSAPCA's Regulation I, including
17 Article 9, which deals with opacity.

18 III

19 On July 12, 1989, at 11:10 a.m. PSAPCA Inspector Larry Vaughn was
20 on routine patrol in the Tide Flats area, driving northbound on
21 Alexander Avenue, when he saw a visible emission coming from a stack
22 located at the Fields plant.

23 Mr. Vaughn is an experienced air pollution inspector who has been
24 examined and certified as a plume reader for 17 years. Prior to the
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1 incident, he had been most recently re-certified on April 9, 1989.

2 To read the opacity of this plume, he positioned himself with the
3 sun behind him within a 140° sector, with the plume perpendicular to
4 him about 1,000 feet away. The visibility was good. The plume was
5 read at the point of greatest opacity. Hills were used as a
6 background.

7 We were not convinced by appellant's attempts to show that the
8 plume the inspector saw was from another industrial source. We find
9 the grey-white plume was coming from the Fields HEAF unit stack.
10 Opacity readings were made from 11:17 a.m. until 11:35 a.m., with
11 readings taken and written down every 15 seconds. For 15 1/2 minutes
12 out of 17 minutes the opacity was 25% to 40%. After the readings, the
13 inspector took photographs of the plume.

14 III

15 The inspector returned to his car and did paperwork on this
16 incident. He then drove to the plant, arriving at 12:05 p.m. There
17 he met Mr. John Zajic, the Equipment Manager, and told him about the
18 opacity from the HEAF stack. Together they climbed up the stack
19 area. Mr. Vaughn put his hand in the stack exhaust and noted it was
20 warm and dry. No visible emissions were apparent.

21 Then, accompanied by Mr. Mike Majack, the Production Manager, the
22 three drove to an observation point off Lincoln Avenue, at the
23 entrance to Reichold Chemical Corporation. There, at 12:35 p.m., no
24 emissions were visible from the Fields HEAF stack.

IV

On July 21, 1989, Notice of Violation No. 092625 was sent by certified mail to the company. The Notice alleged violations of Regulation I, Section 9.03(a) and WAC 173-400-040(1) for excess opacity. Notice and Order of Civil Penalty No. 6978 was received by the Company on August 24, 1989, assessing a \$400 penalty. The company sent a request for mitigation (dated August 31, 1989). PSAPCA denied the mitigation. The company filed its appeal. This became our PCHB No. 89-126.

V

The process at Fields involves saturating moist felt with hot asphalt. Emissions from this operation pass through a system called the HEAF unit which is designed to control and reduce emissions. A dense metal screen on the stack also reduces emissions. The plant was operating on July 20, 1989 at the time in question.

Improvements had been made to the plant in early 1988 in an attempt to ensure compliance with air pollution control requirements. A source test in November 1988, three-quarters of a year before this incident, showed the particulate emissions to be below the PSAPCA particulate emission limits.

VI

By way of background, on October 26, 1988 Fields had violated the PSAPCA opacity standard. On July 14, 1989, after a hearing on the

1 merits, the PCHB affirmed that violation, but suspended the \$400
2 penalty on the condition that respondent not violate PSAPCA's opacity
3 standard for one year from the date of the PCHB order. Fields
4 Products v. PSAPCA, PCHB No. 89-21. PSAPCA has appealed that matter
5 to Superior Court. (Thurston County Cause No. 89-2-01905-9.)

6 VII

7 During this hearing, Mr. Fields expressed concern (often by way
8 of argument) that the Agency was engaged in a "vendetta" against the
9 company. He did not, however, present probative evidence in support.
10 It does appear that communications between parties could be improved.

11 VIII

12 Any Finding of Fact which is deemed a Conclusion of Law is hereby
13 adopted as such. From these Findings of Fact, the Board makes these:

14 CONCLUSIONS OF LAW

15 I

16 The Board has jurisdiction over the issues and the parties.
17 Chapters 43.21B RCW, 70.94 RCW (State Clean Air Act).

18 II

19 PSAPCA Regulation I, Section 9.03(a) prohibits emissions with an
20 opacity equal to or exceeding 20% opacity for a period aggregating
21 three minutes in any one hour.

22 We conclude this standard was exceeded by emissions from
23 appellant's plant on July 20, 1989. The exceedence occurred for 15
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25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
PCHB No. 89-126

1 1/2 minutes, considerably more than the 3 minute limit.

2 III

3 Under Regulation I, Section 9.03(c) the opacity standard does not
4 apply "when the presence of uncombined water is the only reason for
5 the failure of the emission to meet the requirements of this
6 section". This formulation has been interpreted to require appellant
7 to prove that the plume observed must be free of all particulate
8 contaminants. Chemithon Corp. v. PSAPCA, 31 Wn. App. 276, P.2d 108
9 (1982). No such showing was made here. Indeed, the evidence of the
10 November 1988 source test (provided by appellant) is that some
11 particulate material is in the emissions from the plant even when
12 advanced control equipment is in place. Moreover, the photographs
13 clearly show a plume with particulates. A pure steam plume, in
14 contrast, is white, 100% opaque, and disappears quickly.

15 IV

16 RCW 70.94.431 authorizes the imposition of penalties on a strict
17 liability basis for violation of any regulations adopted under the
18 State Clean Air Act. Therefore, for purposes of liability, it is
19 enough for the agency to show that a standard was exceeded. That the
20 precise cause is not known is irrelevant to whether such an exceedence
21 is a violation.

22 V

23 Under RCW 70.94.431(3), the maximum penalty per day for violating
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1 an opacity standard is \$400. Here PSAPCA has assessed the maximum.

2 One the principal aims of civil penalties is to deter violations
3 and to secure compliance. Given appellant's recent violation (PCHB
4 No. 89-21), and the extent and duration of the July 20, 1989
5 violation, we conclude the penalty was reasonable.

6 VI

7 Any Conclusion of Law which is deemed a Finding of Fact is hereby
8 adopted as such. From these Conclusions of Law, the Board enters this:
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ORDER

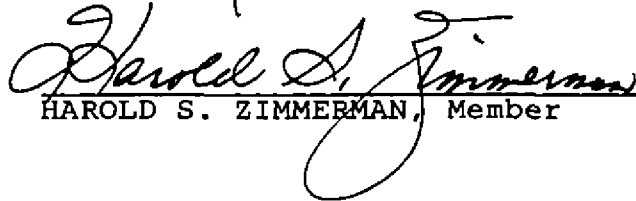
The Notice and Order of Civil Penalty No. 6978 (\$400) is AFFIRMED.

DONE this 20th day of December 1989.

POLLUTION CONTROL HEARINGS BOARD


JUDITH A. BENDOR, Presiding


WICK DUFFORD, Member


HAROLD S. ZIMMERMAN, Member